

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3165 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAMODKUMAR NICHHABHAI DESAI

Versus

DY COLLECTOR

Appearance:

MR JB PARDIWALA for Petitioners
NOTICE SERVED for Respondent No. 1
MR BJ JADEJA for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/09/2000

ORAL JUDGEMENT

Owing to the death of Savitaben Nichhabhai Desai
a party to the Possessory Suit NO.3 of 1990 in the Court
of the Mamlatdar at Chikhli, an order to join her heirs
as parties passed on 5/2/1991 came to be set aside in

Revision by the Dy. Collector, Navsari on 3/3/1992. By this application under Article 226 of the Constitution of India, the legality and validity of the order dtd. 3/3/1992 passed in the Revision are challenged.

2. The petitioners Nos.1 and 2 and Savitaben Nichhabhai Desai filed the suit being Possessor Suit No.3 of 1990 in the Court of the Mamlatdar at Chikhli. Savitaben died on 30th September, 1990. Hence an application was filed for bringing her heirs and representatives on record. The said application was filed on 5th February, 1991. The respondent NO.3 filed the objections. Considering the rival contentions, the learned Mamlatdar allowed the application on 5th April, 1991. The respondent NO.3 who is the original defendant being aggrieved by the order preferred the Revision Application being Revision Application No.3 of 1991, before the Deputy Collector, Navsari who allowed the Revision and quashed the order passed by the Mamlatdar, holding that no-doubt, under Sec. 18 of the Mamlatdars' Courts Act, 1906, heirs and legal representatives could be brought on record if the party dies during the pendency of the suit, but the heirs must be brought within a period of one month. If that is not done, later-on heirs and representatives could not be allowed to be brought on record as there was no such provision in the Act to condone the delay and join the heirs as parties to the suit. In the case on hand, according to the Deputy Collector, the application was not filed within a period of one month of the death of Savitaben. As there was delay and there being no provision to condone the delay, in the Act, the order of the Mamlatdar, according to him was not maintainable. He, therefore, set aside the order, which is challenged in the petition.

3. Whether the Mamlatdar is having the power to condone the delay and permit the party to join the heirs and representative of the party dying during the pendency of the proceedings, is the question raised in this petition. It is true that in the Mamlatdars' Courts Act, there is no provision to condone the delay, but the party praying for the relief is not helpless in law. A similar question arose before this Court in the case of Jamnadas Joitaram since dies by his heirs and legal representatives Shrikant Jamnadas Prajapati vs. Devji Bhana and anr., 13 G.L.R. 566, wherein it is held keeping in mind Sec. 29(2) of the Limitation Act that the Mamlatdar has jurisdiction to condone the delay, if at all the application is filed late and once the delay is condoned, abatement of the suit will have to be set

aside as a necessary corollary. In view of such law, the Mamlatdar rightly passed the order but it seems the Deputy Collector ignorant of the law made clear by this Court, fell into error in passing the impugned order. As per the law made clear in the abovestated decision, when the Mamlatdar is vested with the power to condone the delay and accordingly when the Mamlatdar condoning the delay has allowed the application, the order passed by him was quite legal and valid and was required to be maintained in Revision. However, when the Deputy Collector has in ignorance of the decision of this Court, passed the order, the same being illegal and not maintainable in law, is required to be quashed and set aside.

4. For the aforesaid reasons, the petition is allowed. The order passed by the Deputy Collector, Navsari in Revision Application on 3rd March, 1992 is hereby quashed and set aside. The Mamlatdar at Chikhli is directed to hear the parties regarding joinder of parties, delay in that regard and condonation of delay and then pass appropriate order in accordance with law.

Rule accordingly made absolute. Interim order granted earlier stands vacated.

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